

**MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF LAS VEGAS
AND THE COMMISSION FOR THE LAS VEGAS CENTENNIAL**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of _____, 2006, by and between the COMMISSION FOR THE LAS VEGAS CENTENNIAL, a Nevada non-profit corporation ("Commission") and CITY OF LAS VEGAS ("City").

RECITALS

WHEREAS, the City is the owner of the historical downtown Post Office building located at 301 Stewart Ave., Las Vegas, Nevada, which is registered as a national and state historical landmark (referred to as the "POST Modern");

WHEREAS, the City desires to establish a museum at the POST Modern which will provide residents and tourists of southern Nevada with a facility about the historical and cultural significance of Las Vegas; and

WHEREAS, the City desires to restore and rehabilitate the POST Modern building for the purpose of having the proposed museum; and

WHEREAS, the Commission is able to provide the Centennial Grant funds for the restoration and rehabilitation of the POST Modern building which will preserve a historical landmark in the city of Las Vegas.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I
IMPROVEMENTS AND GRANT FUNDS**

1.1 Grant of Funds. Subject to the terms of this MOU, the Commission hereby agrees to provide to Museum a grant in the total amount of One Million Dollars (\$1,000,000) (the "Centennial Grant") to be used for restoring, rehabilitating and/or reconstructing the exterior of the POST Modern building as a historical and cultural museum (collectively the "Improvements"). The Centennial Grant to be provided to the City may be used on any qualified development costs in furtherance of the Improvements, including, but not limited to, predevelopment costs for engineers, architects, consultants, studies and other related expenses for the Improvements.

1.2 Improvements. City represents and covenants that it is the owner of the Improvements and shall be responsible for the rehabilitation, reconstruction and restoration of the Improvements. Following completion of the Improvements, title to the Improvements, will continue to be vested in the name of the City.

1.3 City and Other Governmental Permits. At such time as required by law, City shall, at its expense, secure or cause to be secured any and all required permits and pay any and all fees which may be required by the City or any other governmental agency affected by the rehabilitation, reconstruction and restoration of the Improvements.

1.4 Rights of Access. For the purposes of assuring compliance with this MOU, representatives of the Commission shall have reasonable access to any area where the work for the Improvements is taking place without charge or fee and at normal business hours during the period of the Improvements work, including, but not limited to, the inspection of the work being performed for the Improvements.

1.5 Local, State and Federal Laws. City shall carry out the rehabilitation, reconstruction and restoration of the Improvements, or cause such work to be carried out, in conformity with all applicable laws, including, without limitation, all applicable federal and state labor standards, safety and environmental laws.

1.6 Funding. The Commission shall provide the City with the Centennial Grant of One Million Dollars (\$1,000,000) to be utilized by the City in the work of the Improvements. The Commission shall provide the Centennial Grant Funds to the City, provided that the City complies with the requirements of this MOU. The Commission shall not provide any additional funding of the Improvements other than the Centennial Grant.

1.7 City Funding Requests. When the City is in need of funds to be provided from the Centennial Grant, City shall furnish the Executive Director with a requisition for the expenditure, which shows the amount, a description of the Improvements completed, copies of related invoices and a statement from the City that the work was completed. The Executive Director will, during the next succeeding fifteen (15) business days to review the disbursement request and the work (if applicable) performed to see if it complies with this Agreement. If the payment should be so made, the Executive Director shall approve the request and issue a check or have the amount requested transferred to the City.

1.8 Cost Overruns. If the cost of the Improvements, or any portion thereof, exceeds the amounts set forth in the City's contracts for the Improvements, City shall pay the amount of the excess from the City's own funds or any other funds obtained by the City or pledged to the City to pay any such excess, so long as such excess amounts are not paid from the Centennial Grant Funds.

1.9 Term. The Centennial Grant provided herein shall be available to be disbursed to the City for a period of five (5) years from the date of this MOU ("Effective Date"). Except for any provisions which survive the expiration or termination of this MOU, this MOU shall terminate upon the satisfactory completion of those Improvements to be funded by the Centennial Grant or the fifth anniversary from the Effective Date, whichever occurs first.

ARTICLE II MISCELLANEOUS COVENANTS

2. Inspections and Reviews. The City covenants that it will allow the Commission to inspect its books and records pertaining to the Improvements and this MOU at all reasonable times and upon reasonable notice.

ARTICLE III DEFAULTS

3.1 Events of Default. Each of the following shall be deemed an "Event of Default" under this MOU.

A. Any party to this MOU fails to pay an amount under this Agreement when due.

B. Any party to this MOU fails to perform any of its duties or obligations hereunder or to abide by any covenant or representation contained in this MOU.

C. A party to this MOU is dissolved or liquidated without the prior written consent of the other party to this MOU.

D. The entry of a decree or order for relief by a court having jurisdiction in respect of any party in an involuntary case under the Federal bankruptcy laws, or any other applicable Federal or state insolvency or similar laws, or appointing a receiver, liquidator, assignee, custodian, trustee, or similar official for any party to this MOU, or ordering the winding up or liquidation of the affairs of any party to this MOU, and the continuance of that decree or order unstayed and in effect for a period of 90 consecutive days.

E. The commencement by any party to this MOU of a voluntary case under the Federal bankruptcy laws or other applicable Federal or state insolvency or other similar laws, or the consent by a party to this MOU to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or similar official for or of any substantial part of the property of such party.

Notwithstanding the provisions stated above, no default, including one of the above described defaults, shall constitute an Event of Default unless one or more of the other parties to this MOU gives the defaulting party to this MOU notice in writing of the default and such default remains uncured for a period of thirty (30) days if the default is capable of cure. If such default is capable of cure, but not within thirty (30) days, it shall not be an Event of Default if the defaulting party commences to cure the same within the above-referenced thirty (30) day period and prosecutes such cure to completion with all due diligence.

3.2 Remedies for Default.

A. Remedies of Commission. If the City is the defaulting party, and an Event of Default has occurred, the City shall be entitled to exercise all rights that it has under the terms of this MOU and may withhold further funding. In addition, subject to Section 4.5 of this MOU, upon an Event of Default by the City, the Commission shall have the right to bring any suit, action or proceeding at law or in equity to enforce its rights under the provisions of this MOU and to require that the City carry out the agreements that it has made hereunder. The suit may be for specific performance, for damages, or for both, and the Commission may also, by action in equity, enjoin any acts or things which are unlawful or in violation of the Commission's rights under this MOU.

B. Remedies of City. Subject to Section 4.5, in the Event of a Default by the Commission hereunder, the City shall be entitled to bring a lawsuit at law or in equity seeking damages from the Commission on account of the breach, and the City shall also be entitled to bring a lawsuit for specific performance to order the Commission to comply with its duties under this MOU, or bring an action for an injunction to enjoin acts of the Commission which may be unlawful or in violation of the rights of the City under this MOU.

3.3 Mutual Remedies. In addition to the remedies stated in Sections 3.1 and 3.2 of this MOU, the Commission and the City shall have all other rights and remedies afforded them by law or in equity for the enforcement of this MOU if an Event of Default has occurred and one of the other parties is the defaulting party. Subject to Section 4.5, no right or remedy conferred by this MOU is intended to be exclusive of any other right or remedy, and each and every said right or remedy is cumulative in addition to any other right or remedy given under this MOU or now or hereafter existing at law or in equity, or by statute.

3.4 No Implied Waivers. The delay or omission of any party in exercising any right or power accruing upon any event of default hereunder shall not exhaust or impair any such right or power, and shall not be construed to be a waiver of any such default or acquiescence therein. Every power or remedy given by this MOU or at law or in equity may be exercised from time to time and in any manner as may be deemed expedient.

3.5 Effect of Waiver. No waiver of any individual default hereunder by any party shall extend toward any subsequent or other event of default hereunder, or shall impair any rights or remedies for any such subsequent or other event of default hereunder.

ARTICLE IV MISCELLANEOUS

4.1 Indemnification.

A. Subject to the limitation of NRS Chapter 41, the City agrees to protect and indemnify and hold the Commission, its directors, officers and employees and agents and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees,

judgments, awards, attorneys' fees, and court costs which the Commission, its directors, officers, employees or agents or any combination thereof may suffer or which may be sought against or recovered or obtained from the them as a result of or by reason of or arising out of or in consequence of (i) the rehabilitation, restoration, construction, operation or maintenance of the Improvements pursuant to this MOU by such indemnifying party (including, without limitation, any claims of any business located on or adjacent to the area in which the Improvements are to be constructed or the owner of any such business or of the property on which the business is located that the manner of construction, operation, or maintenance of the Improvements by such indemnifying party unreasonably interferes with the business or property or constitutes an inverse condemnation of all or a part of that business or property), (ii) any environmental or hazardous waste condition hereafter existing on any of the property which is a part of the Improvements project under the control of such indemnifying party which was caused by the action of the City, or any contractor, subcontractor, agent, licensee or anyone who is directly employed by the City, or any of its contractors, subcontractors or agents, in connection with the Improvements, or (iii) any act or omission, negligent or otherwise, of the City, or any of its contractors, subcontractors, agents, licensees or anyone who is directly employed by the City, or any of its contractors, subcontractors, agents or licensees, in connection with the Improvements.

B. The City agrees that it shall at its sole cost and expense defend the Commission, its directors, officers, employees and agents and each of them in any suit or action for which the City has agreed to indemnify the Commission, its directors, officers, employees or agents. The Commission shall promptly notify the City of any claim made against it for which it may seek indemnification and shall fully cooperate with the City in the defense and/or settlement thereof. If the City fails to defend the Commission as herein provided, the Commission shall have the right but not the obligation to defend the same and charge all of the direct or incidental costs of such defense, including, without limitation, any attorneys' fees or court costs to, and recover the same from, the City.

C. No indemnification is required to be paid by the City for any claim, loss or expense arising from the willful misconduct or gross negligence of the Commission or its directors, officers or employees.

D. The provisions of this Section 4.1 shall survive the termination of this MOU for a period of twelve (12) months thereafter. It is not intended by the parties hereto that the indemnification provided in this Section 4.1 revive any claim of, or extend, any statute of limitations, which has run or expired against any party or third party.

4.2 No Third-Party Beneficiaries. None of the provisions of this MOU is intended to, and none shall, constitute the general public, any member thereof, or any other person a beneficiary or third party beneficiary hereunder or to authorize anyone who is not a party to this MOU to maintain any suit for personal injuries, other damage, or any other cause of action, pursuant to this MOU.

4.3 Delay of Performance. The parties' respective obligations hereunder are subject to the following:

A. Force Majeure. In the event timely performance is prevented by an occurrence beyond the control of and without the fault of the party that is required to perform (financial inability excepted), such as, but not limited to, an act of God, the act of war, flood, earthquake, labor dispute, governmental regulations (other than existing applications of existing regulations of which the parties could reasonably be expected to be aware on the date hereof) or control and shortage of materials, the time in which performance is required to occur shall be continued for a reasonable period of time, not less than the number of days the party was delayed by the occurrence.

B. Reasonable Requests for Extension. If the party expected to perform reasonably requests an extension of time to perform, that request will not be unreasonably denied. This clause shall not apply to any delay exceeding one (1) year from the date for performance specified herein.

4.4 Contract Interpretation. All questions concerning interpretation or clarification of this Agreement will be resolved if possible by the representatives of the Commission and the City administering this Agreement. If those parties are unable to resolve the question, any party to this Agreement involved in such dispute may request in writing a meeting of the City Manager of the City, and the Executive Director or designee to attempt to resolve the question. The parties involved in such dispute agree to use their best efforts to cause those individuals to meet within five (5) days of a request. If there is no resolution to the question within ten (10) days after such request any party involved in such dispute may request binding arbitration as provided in Section 4.5.

4.5 Arbitration. All claims, disputes, or other questions that may arise between the Commission and the City concerning any provision or provisions of this MOU which cannot otherwise be settled and which have not been waived, must be submitted to and be finally settled by binding arbitration in the manner set forth in this Section. After expiration of the ten (10) day period referred to in Section 4.4, any party, by written notice to the other, may demand arbitration. The notice to arbitrate shall provide a complete statement of the nature of the claim and the amount of money in dispute, if known. The notice to arbitrate shall be null and void if received beyond the time allowed by law for the presentation of the claim to the Commission Board of Directors, if applicable, or filing of a lawsuit, whichever occurs first, presenting the same claims as those presented in the notice to arbitrate. Except as provided to the contrary in these provisions on arbitration, the arbitration shall be in conformity with and subject to applicable rules and procedures of the American Arbitration Association. If the American Arbitration Association is not then in existence or for any reason fails or refuses to act, the arbitration shall be in conformity with and subject to the provisions of the Nevada Uniform Arbitration Act as they stand amended at the time of the notice. The arbitrators shall be persons knowledgeable about the subject matter of the arbitration and they shall be bound by this Agreement. All arbitrators shall be impartial and unrelated, directly or indirectly, so far as employment of services is concerned, to any party. The Commission and the City shall pay one-half the cost of arbitration including, without limitation, arbitrators' fees. Within twenty (20) days after notice requiring arbitration, the Commission and the City shall appoint one arbitrator and give notice of the appointment to the other party included in the dispute. The two arbitrators shall choose a third arbitrator within ten (10) days after appointment of the second. If any party

fails to appoint an arbitrator, or if the two arbitrators fail to choose a third, the appointment shall be made by the then presiding judge of the Eighth Judicial District Court of the State of Nevada, acting in his or her individual and nonofficial capacity, on the application of any party involved in the dispute and on five (5) days' notice to the other parties involved in the dispute; provided that any party involved in the dispute may, by notice given before commencement of the arbitration hearing, consent to arbitration by the arbitrator appointed by another party. In that event, no further appointments of arbitrators shall be made and any other arbitrators previously appointed shall be dismissed. All arbitration proceedings shall be held in Clark County, Nevada. The arbitrator(s) shall investigate the facts and shall hold hearings at which the parties may present evidence and arguments, be represented by counsel and conduct cross-examination. The arbitrator(s) shall render a written decision upon the matter presented to them by majority vote within ninety (90) days after the date upon which the last arbitrator is appointed. The parties waive any right to a trial de novo and the decision rendered in such arbitration shall be final and binding on the parties and judgment thereon may be entered by any court having jurisdiction thereof. All fees, costs and/or expenses of the arbitration, excluding preparation and presentation, shall be assessed equally against the Commission and the City. The City shall carry on the work and maintain progress, and the Commission shall continue to perform, during any arbitration, court proceedings or any other disputes, unless the duty of such party to so perform is the subject of the dispute or a reasonable person would consider it imprudent to proceed further because of the default in question. The Commission and the City shall each pay their own costs for preparation of and presentation of all claims. For purposes of payment of an arbitrated claim under the terms of this MOU, the definition of "due and payable" of a claim, shall be the date of the arbitration decision of that claim, plus forty-five (45) calendar days. Interest will be allowed from the date the arbitrators decide payment should have been made at the prime rate referred to in NRS 99.040 plus 2 % per annum.

4.6 Successors: Assignments. This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except as otherwise permitted herein, no assignment of this MOU or any right or obligation hereunder by any party hereto shall be valid unless the other party hereto consents to such assignment in writing.

4.7 Entire Agreement. This MOU, including any exhibits hereto constitutes the entire agreement of the parties hereto. The parties may modify this MOU, but only by a written instrument signed by each party.

4.8 Further Assurances. The City and the Commission agree to do such further acts and things and to execute and deliver to the other such additional certificates, documents and instruments as they may reasonably require or deem advisable to carry into effect the purposes of this MOU. Without limit or foregoing, the Commission will execute and acknowledge the instruments reasonably requested by the City evidencing termination of this MOU.

4.9 Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally

delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

If to the Commission:

Commission of the Las Vegas
c/o Executive Director
400 Stewart Avenue, 8th Floor
Las Vegas, Nevada 89101

If to the City:

City of Las Vegas
Attention: City Manager
400 Stewart Ave., 8th Floor
Las Vegas, Nevada 89101

Notices delivered personally shall be deemed received on delivery and notices by mail shall be deemed received upon receipt or first attempted delivery, whichever first occurs. Any party hereto may change the above addresses by notice delivered to the other parties as provided in this Section, provided that a notice of change of address shall not be effective against any party until actually received by such party.

4.10 Severability. If any provision of this MOU is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof that can be given effect without the invalid or unenforceable provision and the parties agree to replace such invalid or unenforceable provision with a valid provision which has, as nearly as possible, the same effect.

4.11 Authorized Representatives. Each party hereto shall by written notice to the other parties designate an authorized representative, who will be responsible for all acts and approvals on behalf of that party except as otherwise specified in that notice. The authorized representative may be changed from time to time by notice to the parties designating the new authorized representative. Any such designation by the Commission must be signed by the Executive Director. Until another person is designated, the City hereby designates Elizabeth Fretwell, Deputy City Manager, as its authorized representative and the Commission hereby designates its Executive Director as its authorized representative.

4.12 Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Nevada.

4.13 Interpretation. The captions appearing at the commencement of the Articles and Sections hereof are descriptive only and for convenience in reference to this Agreement and in no way whatsoever define, limit or describe the scope or intent of this MOU, nor in any way affect this MOU.

4.14 Termination Date. Except as otherwise provided in Section 4.1D hereof, and in this Section, this MOU shall be in effect from the date and year first mentioned above until the Improvements have been completed and all obligations pursuant to this MOU fulfilled.

4.15 Time Calculation. Whenever in this MOU a reference is made to a period of days, the same shall mean calendar days unless otherwise specified, provided that should any time period so computed end on a non-business day, the time shall be extended to the next business day.

4.16 Counterparts. This MOU may be executed in one or more counterparts, each of which shall be regarded as an original and all of which shall constitute the same MOU.

IN WITNESS WHEREOF the Commission and the City have caused this MOU to be executed as of the day and year first mentioned above.

COMMISSION FOR THE LAS VEGAS
CENTENNIAL

By: _____
Oscar B. Goodman, President

ATTEST:

Esther Carter, Secretary

APPROVED AS TO FORM:

J. Ponticello 7/18/06
Date

CITY OF LAS VEGAS

By: _____
Oscar B. Goodman, Mayor

ATTEST:

Barbara Jo Ronemus, City Clerk

APPROVED AS TO FORM:

J. Ponticello 7/18/06
Date